

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
)
RICHARD DOUGLAS CULLINAN.,) Case No. 22-51326-wlh
)
Debtor.)
_____)

**FIFTH THIRD BANK, N.A.’s RESPONSE TO MOTION TO SELL
REAL PROPERTY AND MOTION TO AVOID JUDGMENT LIEN
ON REAL PROPERTY AND PERSONAL PROPERTY**

Fifth Third Bank, N.A. (“Fifth Third”), creditor and party in interest in the above bankruptcy case, hereby files its Response to the Motion to Sell Real Property and Motion to Avoid Fifth Third Bank, N.A.’s Judicial Lien on Real Property and Personal Property [Docs. 34, 35] filed by Debtor Richard Douglas Cullinan (“Debtor”), showing the Court as follows:

1. Fifth Third is the holder of a claim in the amount of \$1,033,706.34, which is secured by a Writ of Fieri Facias issued as a result of a judgment entered against Debtor and recorded in Lien Book 5150, Page 670, Fulton County, Georgia records.

2. In the Motion to Sell Real Property, Debtor requests permission to sell the Property¹ for the amount of \$797,500.00 with all liens or security interests of the secured creditors attaching to the proceeds of the sale. [Doc. 34, ¶¶ 11, 13.] Debtor further requests that at closing the gross proceeds of the sale: pay the real estate sales commission in the amount of six percent (6%) as stated in the Sales Agreement, pay in full the Coastal States HELOC in the amount of \$41,517.55, with the remainder escrowed in Debtor’s counsel’s IOLTA account pending further order of the

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion to Sell Real Property and/or the Motion to Avoid Fifth Third Bank, N.A.’s Judicial Lien on Real Property and Personal Property.

Court. Fifth Third consents to the sale of the Property, payment of the real estate sales commission, and the payment of the Coastal States HELOC, with the remainder of the proceeds escrowed in Debtor's counsel's IOLTA account pending further order of the Court.

3. In the Motion to Avoid Fifth Third Bank, N.A.'s Judicial Lien on Real Property and Personal Property, Debtor requests the Court avoid the Fifth Third Judgment Lien to the extent it impairs Debtor's statutory exemption for his Residence in the amount of \$21,500.00 and his statutory exemptions in his personal property in the aggregate amount of \$306,861.00. [Doc. 35, ¶¶ 10-11.) Fifth Third does not oppose the avoidance of the Fifth Third Judgment Lien up to the amount of Debtor's claimed statutory exemptions.

4. Fifth Third reserves all rights with respect to the proceeds from the sale of the Property that are to be escrowed in Debtor's counsel's IOLTA account, including without limitation, the right to object to any proceeds of the sale being paid pursuant to the cancelled Coastal States Security Deed and to calculations of the amount to be paid under the Fifth Third Judgment Lien.

This 18th day of May, 2022.

BURR & FORMAN LLP

/s/ Brian J. Levy

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COUNSEL FOR FIFTH THIRD BANK, N.A.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing FIFTH THIRD BANK, N.A.'s RESPONSE TO MOTION TO SELL REAL PROPERTY AND MOTION TO AVOID JUDGMENT LIEN ON REAL PROPERTY AND PERSONAL PROPERTY with the Clerk of Court using the CM/ECF system which will automatically send an email notification of such filing to the attorneys of record.

This 18th day of May, 2022.

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